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# In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 342

BLAIR MANUFACTURING COMPANY,
*Petitioner,*

vs.

EMMETT HAMPTON
and
HAMPTON DISTRIBUTING COMPANY,
*Respondents.*

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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### CASES CITED


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### STATUTE CITED


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### OPINIONS BELOW

The opinion of the Court of Appeals is reported at 374 F. (2d) (May 29, 1967 issue of Advance Sheets) and is printed in Appendix A of the Petition for Writ of Certiorari. The opinion of the United States District Court for the District of Nebraska, by John W. Delehant, Senior Judge, is unreported but is printed as Appendix B of the Petition for Writ of Certiorari.

## JURISDICTION

Judgment of the Court of Appeals was entered April 5, 1967. Motion for rehearing was filed April 24, 1967 and was denied May 3, 1967. Jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

## QUESTIONS PRESENTED

(1) Do this Court's decisions in *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225 and in *Compco Corp. v. Day-Brite Lighting, Inc.*, 376 U.S. 234 control in the case at bar?

(2) Is the opinion of the Court of Appeals herein in conflict with the opinions of the Court of Appeals for the First and Fourth Circuits?

## STATEMENT OF THE CASE

Kelly-Ryan Equipment Company was a manufacturer of farm implements located in Blair, Nebraska. It was a corporate entity. It petitioned for reorganization under the bankruptcy laws of the United States a number of years ago. It operated under the aegis of a Trustee until September 19, 1963. Then by direction of the Federal District Court for Nebraska, it was sold to the Blair Manufacturing Company of Blair, Nebraska.

Prior to the commencement of the Reorganization Proceedings of Kelly Ryan Company, the respondent Emmett Hampton was its sales manager. After these proceedings were initiated, Hampton's direct employment with the company terminated. However, the

Trustee and Hampton worked out an arrangement whereby Hampton was a distributor for the Company with his office in the company's offices. This was in 1956. Hampton continued to sell Kelly Ryan Equipment as an independent entrepreneur until its purchase by Blair Manufacturing Company on September 19, 1963. During this period, Hampton had exposure to the Kelly Ryan manufacturing processes and all documents pertaining to such manufacture. The principal parts manufactured by Kelly Ryan were feeder wagons, manure spreaders and elevators. None of these items or their component parts are patented. The facts do not state nor do they warrant an inference that Hampton was in a confidential or semi-confidential relationship to Kelly Ryan.

Hampton acquired some drawings and tracings of certain component parts of the Kelly Ryan Model 48 Feeder Wagon which he had blueprinted. Shortly after the sale of Kelly Ryan to Blair Manufacturing Company, an action was commenced within the framework of the Reorganization proceedings by Blair Manufacturing Company to compel Hampton to turn over to Blair all of such drawings, tracings and blueprints. After a hearing on October 23, 1963, the Court ordered Hampton to turn over to Blair all such drawings, tracings and blueprints with which Hampton complied. Thereafter, an action was instituted by Blair, again within the framework of the Reorganization, complaining that Hampton had not turned over all of the blueprints, tracings and drawings and praying for permanent injuntive relief against Hampton and Hampton

Distributing Company to prevent the manufacture and sale of any farm equipment containing interchangeable parts with Kelly Ryan equipment.

Hampton Distributing Company is a corporation formed by Emmett Hampton for the manufacture and sale of farm equipment. The Court should note that Kelly Ryan, an individual, was the head of Kelly Ryan Equipment Company prior to the reorganization and is and has been all during these proceedings, President of Blair Manufacturing Company.

The Court ultimately on May 24, 1966, decided the matter in favor of the petitioner herein, Blair Manufacturing Company and in substance permanently restrained Emmett Hampton and Hampton Distributing Company from manufacturing and selling feeder wagons, elevators and manure spreaders containing parts interchangeable with Kelly Ryan feeder wagons, elevators and manure spreaders. Emmett Hampton and Hampton Distributing Company's motion for a new trial was overruled and an appeal was perfected to the United States Court of Appeals for the Eighth Circuit.

The Eighth Circuit Court of Appeals reversed the District Court's judgment.

## REASONS FOR NOT GRANTING WRIT

One of the questions presented by the petitioner herein is whether or not the Patent Laws of the United States preempted the field and thereby precluded the

assertion of common law rights to the protection of blueprints, drawings or trade secrets as against one who has allededly unlawfully acquired them. In *Sears, Roebuck & Co. v. Stiffel Co.,* 376 U.S. 225, one of the questions presented to this court was whether the use of the State laws against unfair competition was compatible with the Federal Patent Laws. This Court held therein that the Federal Patent and Copyright Statutes, like other laws of the United States enacted pursuant to constitutional authority are the Supreme laws of the land. When State Statutes infringe upon the area of these Federal Statutes, it is familiar doctrine that the Federal policy may not be set at naught or its benefits nullified. This is true even though the State Law is enacted in the exercise of otherwise lawful power. Thus, unequivocally, the Sears case, supra, answers the question of whether or not the Federal Patent Laws have preempted the field and precluded the use of common law rights in the protection of blueprints, drawings and so-called trade secrets.

There is no substance to the Petitioner's contention that the Eighth Circuit's decision in this case is in conflict with the opinions of the Court of Appeals for the First and Fourth Circuits. This would, in effect, be saying that this Court's decision in *Sears, Roebuck & Co. v. Stiffel Co.* and *Compco Corp. v. Day-Bright Lighting, Inc.* conflict with the Courts of Appeal opinions of the First and Fourth Circuits in the *Servo. v. General Electric,* 337 F. 2d 716 and *Atlantic Wool Combing Company v. Norfolk Mills, Inc.,* 357 F. 2d 866 cases respectively. Such a conclusion is incorrect. These cases are distinguishable.

In the Sears case, supra, Sears copied a floor to ceiling pole lamp and the defendant, Stiffel, brought a patent infringement and unfair competition suit in the United States District Court for the Northern District of Illinois. In this instance, Sears had copied a pole lamp which was designed by Stiffel. The pole lamp which was made by Stiffel had received a patent and was placed on the market for sale. The court found during the course of the trial that the patents of Stiffel were invalid and then went on to say that an unpatented article is in the public domain and may be made and sold by whoever chooses to do so. In the *Compco v. Day Brite* case, supra, which was a companion case to the *Sears* case, supra, both Compco and Day-Brite were manufacturers of lighting fixtures of a kind widely used in offices and stores. Day-Brite had secured an invalid patent on a type of reflector. In both of these cases, the products, like in the case at bar, were for all intents and purposes unpatented and were placed on the open market for consumption by the general public.

*In the Servo v. General Electric* case, supra, Servo charged General Electric with unlawful infringement of three patents relating to the use of a device called a "hot box detector" and also charged General Electric with acts of unfair competition and unjust enrichment.

In the *Servo* case, supra, the Fourth Circuit concluded that the patents which Servo claimed to have were invalid but did find that General Electric had

copied Servo's 575. In this case, General Electric obtained the information and blueprints from Southern Railroad in Salisbury, North Carolina. Servo had entered into a written agreement with Southern for the installation of Servo's 575 patented article for testing. This agreement contained the following provisions:

> "Servo Corporation of America has a proprietary interest in the information contained herein, and in some instances has patent rights in the systems and components described and requests that you distribute it only to those responsible people within organization who have an official interest. Insofar as the material contained in this document is novel Servo Corporation of America retains a proprietary interest in its development and manufacture."

The Court also found that the Vice President of Southern in charge of this testing was familiar with the terms of the agreement and understood it was to be experimental work and not to be disclosed. Also in its opinion the Court in this case found that the particular instrument referred to as patent 575 was a trade secret which was imparted to another in confidence.

The *Atlantic Wool* case, supra, was a tort action based on the alleged appropriation of a trade secret. In this case, the plaintiff and defendant were competitors in the dehairing of raw cashmere. The plaintiff had designed a special piece of equipment new to the business of dehairing. Plaintiff presented this piece of equipment to a company called Lawton to be manu-

factured. Part of the agreement was that Lawton would manufacture this equipment solely for the plaintiff without disclosure of it to anyone. Ronald Letoile, a mechanic at Atlantic Wool, terminated his employment and commenced work for the defendant. While employed by Atlantic Wool Letoile became familiar with the dehairing machine in question. Letoile after employment by the defendant, revealed the nature of the machine to the defendant and advised that Lawton had manufactured the equipment. The defendant then solicited Lawton and Lawton manufactured the dehairing machine for the defendant.

The Court in the *Atlantic Wool* case, supra, concluded that the plaintiff's design was not public knowledge and was entrusted to Lawton for limited purposes.

In the *Sears* case, supra, and the *Compco* case, supra, it will be observed that the Court found that the item was not patented, was put out for public consumption and was not a trade secret. In the *Atlantic Wool* case, supra, and the *Servo* case, supra, the Court found that the particular articles were not for public consumption or knowledge and that they were trade secrets. In the Hampton case, the particular article which Hampton copied and distributed was not patented, was put in the public domain by Kelly Ryan, and, was therefore not a trade secret.

Ballantine's Law Dictionary defines a trade secret as "any character, peculiar and important to the business of the employer and known only to its owner and

those of its employees to whom it is necessary to confide in order to apply it to the use for which it is intended." It is clearly obvious that a feeder wagon which is unpatented and which is sold generally to the public cannot fall within the meaning of a trade secret.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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